166-698

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 233.

GEORGE W. SENTELL, JR., PLAINTIFF IN ERROR,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY.

IN ERROR TO THE COURT OF APPEALS FOR THE PARISH OF ORLEANS, IN THE STATE OF LOUISIANA.

FILED FEBRUARY 28, 1895.

(15,805.)

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals for the parish of Orleans, in the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the parish of Orleans, in the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George W. Sentell, Jr., *vs.* The New Orleans & Carrollton Railroad Co., No. 1192 of the docket of said court, in which the said Geo. W. Sentell, Jr., is plaintiff and The N. O. & Carrollton R. R. Co. is defendant, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its
b validity, a manifest error hath happened, to the great damage of the said George W. Sentell, Jr., as by his complaint appears, *as by his complaint appears,* we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from this day, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should to be done.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighth day of February, in the year of our Lord one thousand eight hundred and ninety-five.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
R. N. OGDEN,
Presiding Judge of the Court of Appeals for the Parish of Orleans, State of Louisiana.

c [Endorsed:] No. 1192. Court of appeals, parish of Orleans. Geo. W. Sentell, Jr., *versus* N. O. & Carrollton R. R. Co. Writ of error. Filed Feb'y 8th, 1895. T. Reilley, d'y clerk.

d THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the N. O. & Carrollton Railroad Co. of New Orleans, through Jno. M. Bonner, Esq., their attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals for the parish of Orleans, State of Louisiana, wherein George W. Sentell, Jr., is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said George W. Sentell, Jr., as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

R. N. OGDEN,
Judge of the Court of Appeals, Parish of Orleans.

Service of above citation acknowledged.
N. O., Feb'y 8th, '95.

J. M. BONNER,
Att'y for N. O. & Car. R. R. Co.

e [Endorsed:] United States circuit court, eastern district of Louisiana. No. —. Geo. W. Sentell, Jr., *vs.* N. O. & Carrollton R. R. Co. Citation. Marshal's return.

* * * * * * *

1 GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 38692. Civil District Court for the Parish of Orleans.

Petition. Filed April 7th, 1893.

To the hon. civil district court for the parish of Orleans:

The petition of George W. Sentell, Jr., a resident of the city of New Orleans, respectfully represents—

That on Wednesday morning, the 15th March, 1893, at seven o'clock, he crossed St. Charles avenue at the corner of Delachaise street, when he was accompanied by his Newfoundland bitch, named "Countess Lona," registered in the American Kennel Stud Book No. 1467.

That his said bitch stopped on the track of the New Orleans & Carrollton Railroad Co. to relieve herself—had her back partly turned towards Carrollton—when electric car No. 46 of said company, coming down at a rate of speed greatly in excess of that permitted by law, ran over said bitch and instantly killed her.

That said killing was due to the wanton negligence and carelessness of the motorman of said company.

That when petitioner saw the position of his bitch on the track and said car No. 46 coming down at such excessive rate of
2 speed, he yelled to said motorman at the top of his, petitioner's, voice, calling attention to the danger of said bitch; that the motorman immediately rang his bell or gong, but did not attempt to put on his brakes or in any manner reduce the speed of his car, while he could easily have avoided the accident by reducing his speed or even stopping said car.

That said bitch had been bought by your petitioner in last October, was a valuable animal, highly prized by your petitioner, who had bred her to the stud dog "Young Malcolm" on the 18th January, 1893, at a cost of thirty-five dollars, and on the day of said accident she was in whelp and would have whelped between the 23d and 25th of March; that your petitioner had already booked several orders for the sale of the puppies of that expected litter.

That said bitch was well worth the sum of two hundred and fifty dollars, for which amount the said company is liable to him.

Wherefore your petitioner prays that the New Orleans & Carrollton Railroad Co. be cited to answer this petition, and, after due proceedings, there be judgment in favor of your petitioner and against said company in the sum of two hundred and fifty dollars,
3 with legal interest from judicial demand, and costs.

And petitioner prays for trial by jury and for general relief.

(Signed) OMER VILLERÉ, *Of Counsel.*

* * * * * * *

4 *Supplemental Petition. Filed May 22d, 1893.*

GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 38692.

To the hon. civil district court for the parish of Orleans:

The supplemental petition of George W. Sentell, Jr., a resident of this city, respectfully represents—

5 & 6 That he reiterates all the allegations in his original petition contained, which original petition he hereby makes part hereof.

Petitioner further represents that act 107 of 1882, relating to dogs, is unconstitutional, null, & void, being in violation of articles 11, 29, and 210 of the constitution of the State of Louisiana and amendment 14th of the United States Constitution.

Wherefore he prays that this amended & supplemental petition be filed; that the N. O. & Carrollton Railroad Co. be cited to answer hereto; that after due proceedings judgment be rendered as prayed for in the original petition filed herein, for costs, and for general relief.

(Signed) OMER VILLERÉ, *Of Counsel.*

Order endorsed on foregoing petition:
Let this supplemental petition be filed. New Orleans, May 22d, 1893. (Signed) N. H. Rightor, judge.

* * * * * * *

7 *Answer. Filed June 5th, 1893.*

GEO. W. SENTELL, JR., *vs.* N. O. & CAR. R. R. Co. } No. 38692. Civil Dis. Court, Parish of Orleans.

Now comes The N. O. & Car. R. R. Co., made defendant herein, & for answer to the original & supplemental petitions herein denies all and singular the allegations therein contained and specially denies that the employés of the defendant were guilty of negligence in running over plaintiff's dog; that dogs permitted to run at large on the street are, according to all human experience, able to take care of themselves and to keep out of the way of street cars, and said employés had a right to presume that plaintiff's dog would take care of itself.

Further answering, defendant says that dogs are subject to the supervision and control of the police power of the State, and
8 that plaintiff has complied with neither the requirements of act 107 of 1882 nor the requirements of city ordinance No. 4613, council series, both of which are police regulations, and his demand should be rejected with costs.

(Signed) J. M. BONNER, *For Def't.*

Judge's Charge to the Jury.

GENTLEMEN OF THE JURY: 1°. You are the sole and only judges of the facts in this case, and you are also judges of the law, subject to the instructions of the judge.

2°. You have heard the evidence in this case. If you find that the bitch or the owner of the bitch was guilty of contributory negligence, then the plaintiff cannot recover.

3°. If you find that there was no contributory negligence on the part of the bitch or her owner and that there was negligence on the part of the motorman of the defendant company, then the plaintiff may recover.

4th. It is for you, under the evidence, to decide what amount the plaintiff should recover, if you find that he is entitled to recover.

5°. The fact that the bitch wore no tag, as required by
9 the city ordinance, cannot affect the right of plaintiff to recover. The penalty for not wearing a tag is provided for in the ordinance, and that is the only penalty.

6°. Act 107 of 1882 is unconstitutional, as it is destructive of the right of property. A dog is property in this State, as well as horses, cattle, or any other thing of value. The Constitution of the United States provides that no person shall be deprived of his life, liberty, or property without due process of law. A law, therefore, which

declares that property shall not be protected by law unless listed for taxation is unconstitutional.

* * * * * * *

Judgment.

This cause came on again today for trial by jury—
Omer Villeré, for plaintiff;
J. M. Bonner, for defendant—
When, all the jurors sworn and empanelled in this case being present in court and taking their seats in the jury-box, to wit, 1°, Isaac Cahn; 2°, R. E. Lee; 3°, A. G. Johnson; 4°, Wm. Green; 5°, S. D. Dwyer; 6°, J. Milton Green; 7°, Ed. J. Riese; 8°, Jacob Usener, Jr.; 9°, S. L. Levy; 10°, H'y Donerfelder; 11°, W. C. O'Neil; 12°, F. E. Davidson—

10 And the court having appointed A. G. Johnson foreman of the jury, the trial of the case proceeded, and, having heard the pleadings and evidence and arguments of counsel and the charge of the court upon the law, the jury retired to deliberate upon their verdict, and, after so doing, returned into court with the following verdict, to wit:

"We, the jury, find a verdict for the plaintiff for the sum asked.

(Signed) A. G. JOHNSON, *Foreman.*

N. O., Feb'y 14th, '94."

When, on motion of O. Villeré, plaintiff's attorney, it is ordered that said verdict be recorded, and, in accordance with said verdict, the court ordered, adjudged, & decreed that the plaintiff, George W. Sentell, Jr., recover of the defendant, The New Orleans and Carrollton Railroad Co., the sum of two hundred & fifty dollars, interest & costs.

Verdict & judgment rendered February 14th, 1894.
Judgment signed March 16th, 1894.

(Signed) N. H. RIGHTOR, *Judge.*

Motion of Appeal. Filed March 20th, '94.

On motion of John M. Bonner, att'y for defendant, and on suggesting to the court that there is error to the prejudice of the defendant in the final judgment rendered herein on the 14th Feb., 1894, and signed on the 16th March, 1894, and that defend-

11 ant feels aggrieved thereby and desires to appeal suspensively therefrom, it is ordered that a suspensive appeal be allowed from said final judgment to the court of appeals on defendant giving good and solvent surety in the sum of five hundred dollars; and it is further ordered that said appeal be made returnable to the court of appeals for the parish of Orleans on the fourth Monday in March inst.

Bill of Exception No. 1. *Filed March* 14*th*, '94.

Be it remembered that on the trial of this cause, before the judge of division D of the civil district court and a jury, counsel for defendant asked the court to charge the jury as follows:

"The object of act 107 of the Acts of 1882 was not to raise revenue, but to discourage the ownership of dogs. This act, therefore, falls within what is known as the police power of the State and is not in conflict with the Constitution of the United States, and if the jury find from the evidence that the dog whose value is sued for was not placed upon the assessment-rolls, as required by said act, then their verdict should be for the defendant;" which charge the judge refused to give, but charged the jury "that said act # 107 was unconstitutional, null, and void and was to be entirely disre-
12 garded by them;" to which charge as given and to the refusal of the charge as requested the defendant duly excepted before the jury retired to deliberate upon their verdict, and tenders this bill of exceptions to be signed by the judge.

(Signed) N. H. RIGHTOR, *Judge.*

Bill of Exception No. 2. *Filed March* 14*th*, '94.

Be it remembered that on the trial of this cause before the judge of division D of the civil district court and a jury counsel for defendant requested the judge to charge that "city ordinance # 4613, council series, providing that no dog shall be permitted to run or be at large upon any of the streets or public places of the city without having on a tag obtained from the city treasurer, is a valid police regulation, and if the jury find from the evidence that the plaintiff failed to comply with this ordinance, then said dog was on the street in contravention of said ordinance, and if the jury find that plaintiff's fault in not complying with said ordinance contributed to the accident, then they should return a verdict for defendant;" but the court refused so to charge, but instructed
13 the jury "that said ordinance had no bearing on the case, and that they need not consider said ordinance at all;" to which ruling of the court in refusing the charge as requested and in giving the charge in lieu thereof defendant duly excepted before the jury retired to deliberate upon their verdict, and tenders this its bill of exceptions to be signed by the judge.

(Signed) N. H. RIGHTOR, *Judge.*

Bill of Exceptions No. 3. *Filed March* 14*th*, '94.

Be it remembered that on the trial of this cause before the judge of div. D of the civil dist. court and a jury, with the evidence that was adduced proving that the dog stopped on the tracks a short distance ahead of the electric car to urinate, and that the motorman thereupon violently and rapidly sounded his gong to frighten off said dog, counsel for defendant requested the court to charge

the jury "that if the motorman, from the well-known quickness of movements of dogs and from their customary facility in getting out of danger, had the right to conclude that this dog would get out of the way of the car, then the jury should return a verdict for defendant;" but the judge declined to give this charge; to
14 which ruling of the court defendant duly excepted before the jury retired to deliberate on their verdict, and tenders this its bill of exceptions to be signed by the court.

(Signed) N. H. RIGHTOR, *Judge.*

City Ordinance No. 4613, *Annexed to Bill of Exception No.* 2.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 7th*, 1890.

No. 4613, council series.

Be it ordained by the council of the city of New Orleans, That no dog shall be permitted to run or be at large, upon any street, alley, highway, common, or public square, within the limits of the city of New Orleans, provided that this section shall not apply to any dog to which a tag obtained from the treasurer is attached.

SEC. 2. Any person who shall harbor or permit any dog upon or about his or her premises shall be deemed to be the owner or keeper of such dog.

SEC. 3. It shall be the duty of the owner or keeper of a dog to have such dog confined within his or her yard or enclosure or secured by a chain therein.

SEC. 4. It shall be unlawful for the owner or keeper of any dog to allow such dog to be at large in any tenement building or yard thereof occupied by two or more families.

SEC. 5. It shall be unlawful for any person to release or
15 entice any dog secured by the owner or keeper within his or her yard, or by a chain out of the premises of such keeper or owner; nor shall any one molest or seize any dog upon the public thoroughfares or in the public squares when such dog has attached to his collar the tag obtained from the treasurer as provided for in this ordinance.

SEC. 6. Whoever shall keep a vicious dog and shall permit the same to run at large unmuzzled in the streets, squares or public thoroughfares shall be subject to the penalty imposed by section 19 of this ordinance and it shall be the duty of the commissioner of police and public buildings, or his assistants, and the members of the police force, to slay such vicious dog whenever found.

SEC. 7. If any one shall be injured in his person or apparel by a dog on the streets, in the squares or on the public thoroughfares, the owner or keeper of such dog shall suffer the penalties provided in section 19 of this ordinance.

SEC. 8. The treasurer is directed to cause to be made about the first of January of every year, metal dog tags, stamped with some device suitable by him and numbered, and he shall furnish them

to all persons applying for the same, at the rate of two dollars each, said tags to be available only for the year in which issued.

16 SEC. 9. Any person who counterfeits or imitates the tags made and delivered as herein provided by the treasurer, or any person who shall put on a dog any such counterfeit or imitation tag, shall suffer the penalties imposed by section 19 of this ordinance.

SEC. 10. Any person who shall maliciously or wantonly remove or cause to be removed, directly or indirectly, any such tag from the dog of another shall be subject to the penalties provided in section 19 of this ordinance.

SEC. 11. It shall be the duty of the commissioner of police & public buildings, through his assistants, to take up and impound in the work-house all dogs found running at large contrary to this ordinance.

SEC. 12. The commissioner of police and public buildings is authorized to appoint, with the approval of the council, a keeper of the dog pound, a driver of the dog wagon and such assistants of age, as he may deem necessary. The pound-keeper shall furnish security in the sum of five hundred dollars for the faithful discharge of his duties, and shall receive a compensation of fifty dollars per month. The driver shall receive a salary of forty dollars per month. The assistants shall be paid at the rate of one $\frac{50}{100}$ dollars per each day they are on duty.

17 SEC. 13. The city shall furnish a police officer to the commissioner of police and public buildings, whose duty it shall be to accompany said commissioner or his assistants on the dog wagon, and to aid in the enforcement of this ordinance.

SEC. 14. It shall be the duty of the keeper to keep a book to be furnished by the comptroller in which he shall register daily all dogs brought to the pound, the time of their being released or slain and the amount of fees paid. Moreover the keeper shall make and furnish weekly to the commissioner of police & public buildings who shall forward same to the comptroller, a detailed statement of the amount of pound fees and all monies secured, which pound fees shall be deposited with said commissioner, and the pound-keeper who shall fail to furnish said statement as herein provided shall be dismissed.

SEC. 15. Upon the production to the commissioner of police and public buildings of the tag provided for in section 8, the keeper or owner of any dog impounded may redeem the same upon paying the following fees, viz: Redemption fee, two dollars and the further sum of five cents per day for each day said dog shall have remained impounded which shall reimburse the keeper for any expense he shall have incurred for food for the dog.

18 SEC. 16. Any dog not redeemed within two days shall be slain.

SEC. 17. It shall be the duty of the commissioner or his assistants to kill any vicious dog found in violation of this ordinance, which cannot be safely taken up, but it shall not be lawful for any other person to shoot or use poison for the purpose of killing any dog at

any other place than at the dog pound, and should any dog be found at large by the said commissioner or his assistants, and escape by entering the premises of his owner or keeper, and said owner or keeper refuse to deliver up such dog to the commissioner or his assistants, then such owner or keeper shall be subject to the penalties provided for in section 19 of this ordinance, provided nothing herein contained shall be so construed as to authorize the said commissioner or his assistants, to enter the premises or yard of said owner or keeper in pursuit of such dog.

SEC. 18. The commissioner of police & public buildings is hereby authorized to have constructed a suitable dog wagon and to purchase a horse for same.

SEC. 19. That the owner or keeper of a dog and any other person violating the provisions of this ordinance shall be fined not
19 & 20 more than twenty-five dollars by the recorder of the district in which the offense is committed, and in default of payment of the fine, condemned to imprisonment in the parish prison for a term not exceeding thirty days.

SEC. 20. That all monies received from the enforcement of this ordinance shall be put to a separate account, to be known as the "dog-tax fund" out of which shall be paid: first, the cost of tags herein specified; secondly, salaries of officers and other expenses as herein provided for, and the surplus, if any, to be placed to the credit of public improvements.

SEC. 21. That all ordinances or parts of ordinances, on the subject-matter of this ordinance, including ordinances Nos. 6140 and 6491 C. S. are hereby repealed.

Adopted by the council of the city of New Orleans July 1st, 1890.

(Signed) EMILE O'BRIEN,
Clerk of Council.
" JOS. H. SHAKSPEARE, *Mayor.*
" E. L. BOWER,
Acting Secretary to the Mayor.

A true copy.

21 *Opinion & Decree Court of Appeals. Filed Jan'y 9th,* 1895.

GEO. W. SENTELL, JR.,
vs.
N. O. & CARROLLTON R. R. Co. } No. 1192.

This comes to us on an appeal from the lower court.

It presents absolutely a question of law as to the constitutionality of sects. 2 and 3 of act 107 of 1882, which act reads as follows:

"To amend & re-enact sect. 1201 of the Revised Statutes of Louisiana with reference to property in dogs.

"Be it enacted, etc., That sec. 1201 of the Revised Statutes of the State of Louisiana be amended so as to read as follows: From and after the passage of this act, dogs owned by citizens of this

State, are hereby declared to be personal property of such citizen, and shall be placed on the same guarantees of law as other personal property, provided such dogs are given in by the owner thereof to the assessor.

SEC. 2. Be it further enacted, etc., That no dog shall be entitled to the protection of the law, unless the same shall have been placed on the assessment-rolls.

SEC. 3. Be it further enacted, etc., That in civil actions for
22 the killing of, or for injuries done to dogs, the owner cannot recover beyond the amount of the value of such dog or dogs as fixed by himself in the last assessment preceding the killing or injuries complained of.

"SEC. 4. Be it enacted, etc., That all laws in conflict with this act be repealed."

We can see nothing unconstitutional in this act. The provisions mentioned in the title are full & sufficient. It was evidently intended not as a revenue measure, but as a police regulation to prevent the indiscriminate owning & breeding of worthless dogs, nuisances to the entire community. It was passed, too, evidently with a view to protect dogs of a high degree, for under the law the owner and not the assessor was allowed to place his own valuation of the same. Just such a case as the present one seems to have been contemplated by the legislature when they say, "That in civil actions for the killing or injuries done to dogs the owner cannot recover beyond the amount of the value of such dog or dogs as fixed by himself in the last assessment preceding the killing or injuries complained of."

There can be no dispute as to the prohibitive power of the
23 legislature. Indeed the accomplished & learned counsel for plaintiff, in his excellent brief, admits that the legislature could prohibit the keeping of dogs; such being the case, it follows surely they can regulate the manner in which they shall be kept. "*Non debet cui plus licet quod minus est non licere*," "*Omne majus continet in se minus*," are maxims of law. Such, then, being the case, it follows that the law complained of is not unconstitutional and that the title of the act with "reference to property in dogs" is full and unambiguous.

It is unnecessary for us to go further into the analysis of the case. Believing the law to be constitutional, we think plaintiff, in order to recover, should have shown his compliance with it. Obedience is the essence of law, and no one shall profit by his own wrong. To protect this valuable dog he should have complied with the law & the ordinances. Whilst we do not care to refer to the facts in this case, we are justified in noticing the statement made by counsel for plaintiff that the bitch was heavy with pups and would have whelped in a very short time. We cannot understand
24 how any prudent owner and lover of dogs should have carried her on a public thoroughfare without exercising the greatest care & vigilance (all of which does not appear).

Her condition, whilst not known or observable by the motorman,

was well known to her owner. Her want of agility & quickness in avoiding danger, for which all acquainted with dogs are familiar, was owing to a very great degree to the fact that she was heavy with pups, and her death was attributable to the want of prudence on the part of her master, who, now too late, mourns her loss.

The authorities cited by counsel for def't are so numerous that we have been unable to add to them. They have satisfied the court beyond all doubt that the law is constitutional.

Whilst the brief for pl'ff is an able and ingenious one, replete with interesting testimony to the loyalty, faithfulness, & value of this the greatest friend of man, we can find no justice or equity in his claim. The judge of the lower court erred in his charge to the jury. Had he submitted the charges asked for in the three bills of exceptions now before us, the verdict would or should have been different.

25 It is therefore ordered the judgment of the lower court be reversed and avoided, and there be judgment in favor of defendant, with costs.

Judgment.

Extract from the Minutes, 9th Jan'y, 1895.

GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 1192. Court of Appeals, Parish of Orleans.

For the reasons assigned in the written opinion on file, it is ordered the judgment of the lower court be reversed and avoided, and there be judgment in favor of defendant, with costs.

* * * * * * *

Judgment.

Extract from the Minutes, Feb'y 4th, 1895.

GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 1192. Court of Appeals, Parish of Orleans.

For the reasons assigned in the written opinion on file, it is ordered that the rehearing be refused.

26 *Opinion & Decree of Court of Appeals on Application for Rehearing. Filed Feb. 4th, 1895.*

GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 1192. Court of Appeals.

In this case the court has considered attentively the petition for a rehearing and the briefs filed in support thereof, but has failed to find anything advanced therein which was not fully presented

& argued by counsel for the plaintiff, both orally and by briefs, at the trial of the cause.

A rehearing is therefore refused.

Petition for Writ of Error. Filed Feb'y 8th, 1895.

GEO. W. SENTELL, JR., *vs.* N. O. & CARROLLTON R. R. Co. } No. 1192. Court of Appeals, Parish of Orleans, State of Louisiana.

And now comes George W. Sentell, Jr., plaintiff herein, and says that on or about the 9th day of January, 1895, this court entered judgment herein in favor of the defendants and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff; all of which will more in detail appear from the assignment of errors which is filed with this petition.

27 Wherefore this plaintiff prays that a writ of error may issue in this behalf to the United States Supreme Court for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(Signed) OMER VILLERÉ,
GEO. DENEGRE,
Att'ys for Pl'ff.

Order Endorsed on Foregoing Petition.

This 8th day of February, 1895, came the plaintiff, by his attorney, and filed herein & presented to the court his petition praying for the allowance of a writ of error intended to be urged by him; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceeedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of one hundred dollars, which shall operate as a supersedeas bond.

(Signed) R. N. OGDEN,
Presiding Judge of the Court of Appeals for the Parish of Orleans.

28 Know all men by these presents that we, George W. Sentell, of New Orleans, as principal, — Omer Villeré, of New Orleans, as surety, are held and firmly bound unto the New Orleans & Carrollton Railroad Co. of New Orleans in the full and just sum of one hundred dollars, to be paid to the said New Orleans & Carrollton Railroad Co. of New Orleans, its certain attorney, executors, administrators, or assigns; to which payment,

well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at the court of appeals of the parish of Orleans, in the State of Louisiana, in a suit depending in said circuit court wherein George W. Sentell, Jr., is plaintiff and The New Orleans and Carrollton Railroad Co. are defendants, judgment was rendered against the said George W. Sentell, Jr., plaintiff, and the said George W. Sentell, Jr., having obtained a writ of error and filed a copy thereof in the clerk's office of the said court of appeals to reverse the judgment in the aforesaid suit, and a citation directed to the said New Orleans & Carrollton Railroad Co., citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said George W. Sentell, Jr., shall prosecute said writ to effect and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) GEO. W. SENTELL, JR., [L. S.]
By his att'y, OMER VILLERÉ. [L. S.]
" OMER VILLERÉ. [L. S.]

Approved and accepted.

(Signed) R. N. OGDEN,
Presiding Judge of the Court of Appeals for the Parish of Orleans.

29 [Endorsed:] Court of appeals, parish of Orleans. No. 1192. Geo. W. Sentell, Jr., *vs.* N. O. & Carrollton R. R. Co. Bond for writ of error. Filed Feb'y 8th, 1895. (Signed) T. Reilley, d'y clerk.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

Personally appeared Omer Villeré, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, in the State of Louisiana, and is worth the full sum of one hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) OMER VILLERÉ.

Subscribed and sworn before me this 8th day of Feb'y, 1895.

[SEAL.] (Signed) HEWES T. GURLEY,
Notary Public, Parish of Orleans, State of Louisiana.

30 *Assignment of Errors. Filed Feb'y 8th, 1895.*

GEO. W. SENTELL
vs.
N. O. & CARROLLTON R. R. Co. } No. 1192. Court of Appeals for the Parish of Orleans.

And now comes George W. Sentell, Jr., plaintiff in the cause, asking for a writ of error herein, and assigns the following errors in the judgment herein, rendered on the 9th day of January, 1895, and in the record & proceedings thereof as follows:

The court of appeals for the parish of Orleans erred in deciding that act 107 of the General Assembly of Louisiana of 1882 is not violative of the Constitution of the United States, 14th amendment, and in reversing the judgment of the civil district court for the parish of Orleans, which had decided said law unconstitutional.

And for said errors and other errors apparent on the face of the record the plaintiff in the cause, plaintiff in error, prays that said judgment may be reversed, with costs, and for general relief.

(Signed) OMER VILLERÉ AND
GEORGE DENEGRE,
Att'ys for Pl'ff Praying for Writ of Error.

31–33 *Certificate of Judges Court of Appeals. Filed Feb'y 18th, 1895.*

GEO. W. SENTELL, JR.,
vs.
N. O. & CARROLLTON R. R. Co. } No. 1192.

We, the undersigned, judges of the court of appeals for the parish of Orleans, State of Louisiana, do hereby certify that in the above case we reversed the decision of the lower court on the ground that act 107 of 1882 is constitutional and not in violation of the constitutions of Louisiana or the United States, and that, having so decided, we passed upon no other point in the case.

(Signed) R. N. OGDEN.
WYNNE ROGERS.

34 Supreme Court of the United States.

GEO. W. SENTELL, JR., Plaintiff in Error,
vs.
N. O. & CARROLLTON R. R. Co., Defendant in Error.

And now into court comes George W. Sentell, Jr., the plaintiff in error, and states that he intends to rely upon the following error:

That the court of appeals for the parish of Orleans erred in deciding that act 107 of 1882 of Louisiana is constitutional.

And that he thinks the following parts of the record are necessary for the consideration thereof:

1°.	Original petition	Page 1
2°.	Supplemental petition	" 4
3°.	Order on sup. "	" 5
4°.	Answer	" 7
5°.	Judge's charge to jury	" 8
6°.	Judgment	" 9
7°.	Motion of appeal	" 10
8°.	Bill of exception No. 1	" 11
9°.	Do. No. 2	" 12
10°.	Do. No. 3	" 13
11°.	City ordinance	" 14
12°.	Opinion court of appeals	" 21
13°.	Judgment " "	" 25
14°.	Do. " " refusing rehearing	" 25
15°.	Opinion " " " "	" 26
16°.	Petition for writ of error	" 26
	17°. Order granting writ	" 27
35	18°. Certificate of judges court of appeals	" 31
	19°. Bond for writ of error	" 28
20°.	Assignment of errors	" 30

Wherefore he prays that the above be printed.

OMER VILLERÉ,
GEO. DENÈGRE,
Attorneys for Plaintiff in Error.

I acknowledge having been served with a copy of above.
New Orleans, Feb'y 23d, 1895.

J. M. BONNER,
Att'y for N. O. & Carrollton R. R. Co., Def't in Error.

36 [Endorsed:] Case No. 15,805. Supreme Court U. S., October term, 1894. Term No., 921. Geo. W. Sentell, Jr., P. E., *vs.* The New Orleans & Carrollton R. R. Co. Statement of error & designation by P. E. of parts of record necessary to be printed. Filed Mar. 2, 1895.

Endorsed on cover: Case No. 15,805. Louisiana court of appeals, parish of Orleans. Term No., 233. George W. Sentell, Jr., plaintiff in error, *vs.* The New Orleans & Carrollton Railroad Company. Filed February 28, 1895.

166-61

Office Supreme Court, U. S.
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No. ~~15,995.~~ 233.

Supreme Court of the United States.

GEO. W. SENTELL, PLAINTIFF IN ERROR,

versus

N. O. & CARROLLTON R. R. CO.,
DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

GEORGE DENÈGRE,
OMER VILLERÉ,
Attorneys for Plaintiff in Error.

Philippe's Printery, 614-616 St. Louis Street.

No. 15,805.

Supreme Court of the United States.

GEO. W. SENTELL, PLAINTIFF IN ERROR,

versus

N. O. & CARROLLTON R. R. CO.,
DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

George W. Sentell sued the New Orleans and Carrollton Railroad Company for two hundred and fifty dollars, the value of a St. Bernard bitch which was run over and killed by an electric car of said Company (T. p. 2), and in a supplemental petition alleged that Act 107 of 1882, of Louisiana, which declares that no dog shall receive the protection of law unless listed for taxation, is unconstitutional, being in violation of the 14th Amendment of the Constitution of the United States (T. p. 3). Defendant answered, pleading the general denial, and alleging that plaintiff not having complied with Act 107 of 1882 or with City Ordinance 4613 C. S., could not recover (T. p. 4).

The case was tried before a jury; the Judge charged that City Ordinance 4613 C. S. (T. p. 7) could not affect plaintiff's right to recover, and that Act 107 of 1882 was in violation of the Constitution of the United States (T. p. 4).

The jury returned a verdict in favor of plaintiff for $250 (T. p. 5).

The amount involved being less than five hundred dollars, defendant was entitled to an appeal on questions of law *alone* under Article 128 of the Constitution of Louisiana of 1879 (*see Appendix*) and the case was so appealed. There is therefore no evidence in the Record, the same not being transcribed in cases involving less than $500.

Defendant took three bills of exception to the charge of the Judge:

First. That Act 107 of 1882 is not violative of the Constitution of the United States (T. p. 6).

Second. That City Ordinance 4613 C. S. requiring dogs to have a tag should have precluded plaintiff's action (T. p. 6).

Third. That the motorman had the right to conclude that dogs being quick on their feet, this dog should have gotten out of the way (T. p. 6).

The Court of Appeals reversed the decision of the lower Court on the ground that Act 107 of 1882 is constitutional (T. p. 9).

Plaintiff has taken this writ of error from the judgment of the Court of Appeals for the Parish of Orleans.

SPECIFICATION OF ERROR.

Plaintiff in error sets out that the Court of Appeals for the Parish of Orleans erred in holding that Act 107 of the Acts of Louisiana of 1882 is a valid and constitutional law not in conflict with the Constitution of the United States, 14th Amendment, and in deciding against plaintiff in error.

ARGUMENT.

The point that Act 107 of 1882 of Louisiana is violative of the 14th Amendment of the Constitution of the United States was raised in the pleadings and appears: 1st, in the supplemental petition of plaintiff; 2nd, in the Judge's charge to the jury, Sec. 6 (T. p. 4); 3rd, in defendant's bill of exception No. 1 (T. p. 6).

The decree of the Court of Appeals simply says that for the reasons assigned by the Court the judgment of the lower Court is reversed, and does not say on what grounds. But in the opinion of said Court, after quoting the Act in full, the Court say: "*We can see nothing unconstitutional in this Act*" (T. p. 10). And further (T. p. 10): "*It is unnecessary for us to go further into the analysis of the case. Believing the law to be constitutional, we think plaintiff in order to recover should have shown his compliance with it.*"

Then the Court goes on to discuss facts, when the facts were not before them and the appeal was on questions of law alone. That part of the de-

cision therefore is *obiter dictum*. The jury was the sole judge of the facts and that they should have thought that defendant was guilty of negligence and plaintiff not guilty of contributory negligence, was not before the Court for review.

We refer to the opinion, because your Honors have decided that in cases coming from Louisiana, the opinion may be referred to, if necessary, to determine whether the judgment is one subject to review. 12 How. 165; 19 How. 202; 108 U. S. 105.

Further, your Honors will find in the Transcript, p. 14, a certificate from the Judges of the Court of Appeals that the constitutionality of Act 107 of 1882 is the only point upon which they passed. 24 How. 413, 415; 5 Pet. 248.

Should your Honors, however decide to refer neither to the opinion or the certificate of the Judges, then we refer your Honors to the following cases:

Klinger vs. Missouri, 13 Wall. 257;
Johnson vs. Risk, 137 U. S. 300;
Maguire vs. Tyler, 8 Wall. 652;
Gibson vs. Chouteau, 8 Wall. 317,

to the effect that:

"When there is a federal question, but the decision may have been on another independent ground, and on which ground the judgment was based does not appear, then if the independent ground was clearly invalid and insufficient to sustain the judgment, the Supreme Court will take

jurisdiction of the case, because when put to inference as to what points the State Court decided, it ought not to assume that the judgment was based on grounds clearly untenable."

And the two grounds in defendant's bills of exception Nos. 2 and 3 are clearly untenable.

Bill of exception No. 2 relies on City Ordinance 4613 C. S. (T. p. 7), which Ordinance requires dogs to wear a tag. The penalty for not wearing a tag is provided in Section 19 of the Ordinance, and failure to put a tag on the dog can not deprive the owner of his right to sue for its value.

Bill of exception No. 3 complains that the Judge did not charge the jury that dogs were quick on their feet. That is a fact which the jurors knew as well as the Judge or the counsellor, and the jury was the sole judge as to whether, under the evidence, the defendant Company was or not liable.

The decision therefore could not have been on other grounds but the constitutionality of Act 107 of 1882, and we shall confine our argument to that ground.

Counsel for defendant and the Court of Appeals say that Act 107 is a police regulation. There is no authority for such contention. The Act on its face is a revenue measure. But, even if it were a police regulation, that would not make it constitutional.

The Act provides that all dogs shall be listed for taxation. That is good, whether for revenue

or police regulation. The Act provides that dogs not listed for taxation shall not receive the protection of law. That is bad, whether to enforce collection of revenue or to discourage the keeping of worthless dogs. It is depriving a person of his property without due process of law, in direct conflict with the 14th Amendment of the Constitution of the United States. There is no distinction or difference between taking a man's property without due process of law or taking from him the right to appear in Court to defend his property, without due process of law.

Whatever may have been the intention of the Legislature when Act 107 of 1882 was passed, it is not a police regulation, it is a revenue law on its face. It requires dogs to be listed for taxation and provides that dogs not so listed shall not receive the protection of law. Why? the Court of Appeals say to discountenance the keeping of worthless dogs; we say, to enforce the payment of taxes.

We find no authority to support the contention that said law is a police regulation, or if so, that the Legislature, in the exercise of its police power, can deprive a person of his property without due process of law.

The exercise of the police power is subordinate to the Constitution, and must give way to the same. 116 U. S. 446; 123 U. S. 623; 95 U. S. 465; 92 U. S. 276; 109 N. Y. 389.

If it be necessary to enact a police regulation, the penalties therein provided can be inflicted only

after *due process of law*. Due process of law in cases involving penal infliction necessarily implies a trial according to the settled course of judicial proceedings in such cases. 137 U. S. 692; 1 Curt. 311; 4 Hill 140; 12 N. Y. 202; 13 How. 40; Story, Const. § 1783; I Kent. Com. 651; 4 Blackstone Com. 5, 377.

Dogs were always property in the State of Louisiana, as well as horses, cattle and all kinds of movable property.

Civil Code of Louisiana, Articles 448, 449, 473, 475, 478, 483, 484, 488, 489, 497, 3426; Revised Statutes of Louisiana, Sections 1201, 815, 816; Saunders on Taxation, 64. Even at common law, dogs were the subject of property, and a civil action could be maintained for the loss of them. Blackstone Commentaries, Vol. 4, p. 236; Vol. 2, p. 393. And by Statutes of 10 Geo. III, C. 18; 7 and 8 Geo. IV, C. 39; and 8 and 9 Victoria, C. 47, dog stealing is declared a misdemeanor and punishable by fine and imprisonment.

This is not the first time that the constitutionality of Act 107 of 1882 was raised in Louisiana. In November 1884, the point was raised in the parish of Pointe Coupée and the Court of Appeals of said parish, composed of Judges McVea and Powell, pronounced the law unconstitutional. The opinion of the Court was delivered by Judge McVea, one of the ablest jurists of Louisiana, and we quote from his decision in the case of Boudreau vs. Gosserand:

"It did not take any legislative act or recog-
"nition to make all other animals of like nature
"property, and as such entitled to all the protec-
"tion conceded to other property.

"This right of property is above and inde-
"pendent of all legislative acts or constitutions,
"and so declared by Cooley.

"It does not owe its origin to Constitutions.
"They are held sacred and inviolable against even
"the plenitude of legislative power. These rights
"are protected under the principle of prevalent
"and universal authority. Cooley's Constitutional
"Limitations, pp. 47, 212 and 439.".

The same principle was held in a very interesting opinion in the case of Mayor of Washington vs. Meigs, 1 McArthur, 53, (29 Am. Rep. 578). The learned Judge said: "The right of
"property in animals can not be declared unlaw-
"ful, unless a license is first obtained. We do not
"undertake to say that a given or particular mode
"of using any kind of property might not be pro-
"hibited; but the general possession of that in
"which the right of property exists, which is not
"mere franchise, how can it be declared unlawful,
"and a license demanded before the person is au-
"thorized to own or keep?"

In the case of Heinodt vs. Hackett, 34 Mich. 283, a statute authorized "any person" to kill a dog going at large and not licensed and collared. In an action to recover for the killing of plaintiff's dog by defendant's dog, it was held no defense

that plaintiff's dog was not licensed and collared, as defendant's dog was not "a person."

"When trespassing animals are killed in a wanton, malicious and deliberate way, exemplary damages may be recovered."

20 Tex., 811, Champion vs. Vincent.

1 Harr., (Del.) 142, Richardson vs. Carr.

See also Harrington vs. Miles, 11 Kansas, 480.

State vs. Brown, 9 Baxt., 53.

Mullay vs. People, 86 N. Y., 365.

The American Constitutions secure to the citizen an immunity against the deprivation of his property, except by "due process of law" or "the law of the land." Due process of law, in each particular case, means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

Cooley Const. Lim., 356.

Ex parte Ah. Fook, 49 Cal., 403.

Jones vs. Perry, 10 Yerg (Tenn.), 59.

Brown vs. Levee Com., 50 Miss., 468.

The phrase "due process of law" means more than a special act passed for the very purpose of authorizing the deprivation; it means the general law in its regular course of administration through the Courts of Justice. Louisville & N. R. Co., vs. Baldwin, 5, So. Rep., 311.

Clark vs. Mitchell, 64 Mo., 564.

Atchinson vs. Baty, 6 Neb., 37.
Taylor vs. Porter, 4 Hill (N. Y.), 140.
Hoke vs. Henderson, 4 Dev. (N. Car.), 15.

"An ordinance authorizing the officers of a town to seize and sell animals found running at large, without notice to the owner, is unconstitutional."

Warden vs. Mount, 78 Ky., 86.
Donovan vs. Vicksburg, 29 Miss., 247.
Rockwell vs. Nearing, 35 N. Y., 302.
Halloway vs. Police Jury, 16 La. Ann., 203.

In the case of Cummings vs. Missouri, **4 Wall, 277,** the Court held :

"The test oath imposed by the Constitution of Missouri is a violation of that provision of the Constitution of the United States which provides that 'No State shall pass any bill of attainder or *ex post facto* law'."

A bill of attainder is a legislative act, which inflicts punishment without a judicial trial.

And in *Ex parte* A. H. Garland, **4 Wall, 333,** it was held that the Act of Congress of January 24, 1865, prescribing a test oath, that the deponent has never voluntarily borne arms against the United States, etc., as a qualification for the admission of an attorney and counsellor of this Court, is unconstitutional and void.

How could it be contended, therefore, that a law, which virtually declares property no property at all, unless same is listed for taxation, is constitu-

tional? It deprives one of that property or of his right to it, without due process of law.

Ex parte Siebold, 100 U. S., 371.

In this case, the petitioner for a writ of *habeas corpus* had been convicted and imprisoned for violation of an election law, and he prayed to be released on the ground that the statute was unconstitutional. The Court said: "If this position is well taken, it affects the foundation of the whole proceedings. An unconstitutional law is void and is as no law. A conviction under it is not merely erroneous, but it is illegal and void."

We, therefore, respectfully submit that the judgment of the Court of Appeals should be reversed.

Respectfully submitted.

GEORGE DENÈGRE,
OMER VILLERÉ,
Attorneys for Plaintiff in Error.

New Orleans, July 30, 1896.

APPENDIX.

Act 107 of 1882.

An Act *To amend and re-enact Section (1201) of the Revised Statutes of Louisiana, with reference to property in dogs.*

Section 1. *Be it enacted by the General Assembly of the State of Louisiana*, That Section 1201 of the Revised Statutes of Louisiana be amended and re-enacted so as to read as follows: From and after the passage of this act, dogs, owned by citizens of this State, are hereby declared to be personal property of such citizens, and shall be placed on the same guarantees of law as other personal property; *provided* such dogs are given in by the owner thereof to the Assessor.

Sec. 2. *Be it further enacted, etc.*, That no dog shall be entitled to the protection of the law unless the same shall have been placed upon the assessment rolls.

Sec. 3. *Be it further enacted, etc.*, That in civil actions for the killing of or for injuries done to dogs, the owner cannot recover beyond the amount of the value of such dog or dogs, as fixed by himself in the last assessment preceding the killing or injuries complained of.

Sec. 4. *Be it further enacted, etc.*, That all laws in conflict with this act be repealed.

ARTICLE 128

OF THE CONSTITUTION OF LOUISIANA, AS AMENDED IN 1882.

There shall be in the parish of Orleans a Court of Appeals for said parish, with exclusive appellate jurisdiction in all matters, civil and probate, arising in said parish, when the amount in dispute, or fund to be distributed, exceeds one hundred dollars, exclusive of interest, and does not exceed two thousand dollars, exclusive of interest. Said Court shall be presided over by two judges who shall be elected by the General Assembly, in joint session .... Said appeals shall be on questions of law alone in all cases involving less than five hundred dollars, exclusive of interest, and upon the law and facts in other cases ....

166-698

Office Supreme Court, U. S.
FILED
MAR 24 1897
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 233.

GEO. W. SENTELL, *Plaintiff in Error,*

versus

NEW ORLEANS & CARROLLTON R. R. CO.,
Defendant in Error.

Error to the Court of Appeals, Parish of Orleans, Louisiana.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

HENRY P. DART,
Attorney for Defendant in Error.

New Orleans, March 18, 1897.

L. GRAHAM & SON, LTD., 44-48 BARONNE ST., NEW ORLEANS

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 233.

GEO. W. SENTELL, *Plaintiff in Error*,

versus

NEW ORLEANS & CARROLLTON R. R. CO.,
Defendant in Error.

Error to the Court of Appeals, Parish of Orleans, Louisiana.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

I.

The plaintiff in error brought an action before the Civil District Court for the parish of Orleans, Louisiana, claiming $250 damages for the killing of his Newfoundland bitch, the Countess Lona, which had stopped "to relieve herself" upon the track of the defendant at an early hour in the morning. The defendant operates an electric street railway in the city of New Orleans.

Plaintiff charges that the killing was due to the wanton negligence and carelessness of the motorman in charge of the car which ran over the animal.

He avers that he bought the animal in October, 1893, and that she was within ten days of the whelping period.

By a supplemental petition he charged that Act 107 of the Legislature of Louisiana of 1882, regarding dogs, is in conflict with certain articles of the State Constitution, and also with the fourteenth amendment to the Constitution of the United States, and therefore void.

For convenience we print that act here:

AN ACT.

To amend and re-enact Sec. (1201) twelve hundred and one of the Revised Statutes of Louisiana, with reference to property in dogs.

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That Sec. (1201) twelve hundred and one of the Revised Statutes of Louisiana be amended and re-enacted so as to read as follows: From and after the passage of this act dogs owned by citizens of this State are hereby declared to be personal property of such citizens, and shall be placed on the same guarantees of law as other personal property; provided, such dogs are given in by the owner thereof to the Assessor.

"SEC. 2. *Be it further enacted, etc.*, That no dog shall be entitled to the protection of the law unless the same shall have been placed upon the assessment rolls.

"SEC. 3. *Be it further enacted, etc.*, That in civil actions for the killing of or for injuries done to dogs, the owner can not recover beyond the amount of the value of such dog or dogs, as fixed by himself in the last assessment preceding the killing or injuries complained of.

"SEC. 4. *Be it further enacted, etc.*, That all laws in conflict with this act be repealed.

"Approved July 5, 1882."

The defendant's answer, among other things, denied negligence and averred that dogs running at large on the streets are presumed to be able to take care of themselves and to keep out of the way of electric cars, and that the motorman had a right to presume that the dog in question would take care of itself.

For further answer, it said that dogs are subject to the supervision and control of the police power of the State, and that plaintiff had not complied with the requirements of Act 107 of 1882, nor with those of the municipal ordinance of New Orleans, No. 4613 Council Series.

On the trial the defendant in error requested three charges, which were refused. To this and to the charge as given three bills of exceptions were taken. The first, to the charge that Act 107 of 1882 was unconstitutional; the second, to the charge that the city ordinance in question had no bearing on the case, and could not be considered by the jury, and the third, to the refusal to charge that the motorman had the right to presume that the dog would get off the track, etc.

The jury found for the plaintiff in error, and on appeal to the Court of Appeals (which had jurisdiction over the issue) the refusal of the judge to give the three charges in question was held error; the act of the Legislature was held to be constitutional, and that law and the city ordinance were held to be laws which the plaintiff should have complied with. It was also held that *all the* charges requested by defendant should have been given. The judgment was therefore reversed and judgment entered for defendant.

This writ of error is prosecuted by the original plaintiff below, assigning as sole error that the court *a quo* should have decreed the unconstitutionality of Act 107 of the Legislature of 1882, because of its supposed conflict with the Fourteenth Amendment of the Constitution of the United States.

II.

We find in the record (p. 14) an *ex parte* certificate issued by the judges of the Court of Appeals for the parish of Orleans, certifying that this was the only point upon which they passed in deciding the case. This certificate is not known to the practice in Louisiana, it being there a settled rule that what has or what has not been decided by the Court is a mat-

ter of construction of the decree itself, and in case of doubt the opinion may be examined upon which the decree is founded.

Keane vs. Fisher, 10 La. An. 262, 640.
Avery vs. Police Jury, 15 La. An. 223-4.

It is unquestionably better practice to interpret a judgment by the reasons which precede its decision than by subsequent *ex parte* declarations of the judges as to what they think was decided.

We write this inasmuch as the OPINION of the Court of Appeals shows plainly that they considered valid the *ordinance* of the city of New Orleans regulating dogs, and they held also that the lower judge erred in refusing to give the *three* charges asked, one of which went to the general rule of law applicable to the facts. We copy their language: "Had he submitted the charges asked for in the THREE bills of exceptions now before us, the verdict would or should have been different" (Rec., p. 11).

See Bills of Exceptions, Rec., p. 6; City Ordinance, p. 7, and opinion of the lower court, p. 10.

In other words that Court might well have decided that the statute of the State of Louisiana was unconstitutional, and yet have reversed the judgment because of the ordinance of the city of New Orleans, which makes it unlawful (see 1st section, p. 7) for dogs *to be at large* upon any street, highway, etc., within the city limits, unless tagged in the manner therein provided, and because of the failure to charge the general law pertinent to the admitted facts.

Uuless the case could only have been decided by passing upon the constitutionality or unconstitutionality of the statute, this Court, as we understand it, has no jurisdiction, although it may be your opinion that the Federal question HAS been passed upon.

See Eagan vs. Hart, No. 63, decided here on the 1st of February, and Eustis vs. Bolles, 150 U. S. 361; Con. R. R. Co. vs. Woodruff, 153 U. S. 689; Hammond vs. Con. Mut. F. I. Co., 150 U. S. 633.

III

The first and most natural reflection upon reading this act is that it is clearly an exercise of the police power, and is intended to operate for the general good. It compels the disclosure of the ownership of dogs, making certain thereby the persons responsible for injuries done either to persons or to property, and it also protects the dog owner by allowing him to recover the value of his dog as fixed by him, should occasion arise for such an action. We see next that it applies to all dogs, without exception or reservation, and to all owners of all dogs throughout the State; consequently it is a general provision for the regulation of such animals in the State of Louisiana.

At this stage of discussion on the question of police power we are unable to make an extended argument without going over the beaten grounds of the decisions, to which we now hasten:

The case of BLAIR VS. FOREHAND, 100 Mass. 136 (1 Amer. Rep. 94), from constant quotation has become a landmark.

"All rights of property," say the Court, "are held subject to such reasonable control and regulation of the mode of keeping and use as the Legislature, under the police power vested in them by the constitution of the commonwealth, may think necessary for the preventing of injuries to the rights of others, and the security of the public health and welfare. In the exercise of this power the Legislature may not only provide that certain kinds of property (either absolutely or when held in such a manner or under such circumstances as to be injurious, dangerous or noxious) may be seized and confiscated, upon legal process, after notice and hearing, but may also, when necessary to insure the public safety, authorize them to be summarily destroyed by the municipal authorities without previous notice to the owner—as in the familiar cases of pulling down buildings to prevent the spreading of a conflagration, or the impending fall of the buildings themselves, throwing overboard of infected food, or abating other nuisances dangerous to health. Common-

wealth vs. Alger, 7 Cush. 85; Fisher vs. McGirr, 1 Gray, 27; Parsons vs. Pettingell, 11 Allen, 512; Salem vs. Eastern Railroad Co., 98 Mass. 443, 444; License Cases, 5 How. 581, 589, 632; Dewey vs. White, Mood. & Malk. 56; 2 Kent's Com. (6th Ed.) 339, 340.

"There is no kind of property over which the exercise of this power is more frequent or more necessary than that which is the subject of the present actions. In regard to the ownership of live animals the law has long made a distinction between dogs and cats and other domestic quadrupeds growing out of the nature of the creatures and the purposes for which they are kept. Beasts which have been thoroughly tamed and are used for burden or husbandry, or for food, such as horses, cattle and sheep, are as truly property of intrinsic value and entitled to the same protection as any kind of goods. But dogs and cats, even in a state of domestication, never wholly lose their wild nature and destructive instincts, and are kept either for uses which depend on retaining and calling into action those very natures and instincts, or else for the mere whim and pleasure of the owner; and, therefore, although a man might have such a right of property in a dog as to maintain trespass and trover for unlawful taking or destroying it, yet he was held, in the phrase of the books, to have 'no absolute and valuable property' therein which could be the subject of a prosecution for larceny at common law, or even, according to some authorities, of an action of *detenue* or replevin, or a distress for rent, or which would make him responsible for the trespasses of his dog on the lands of other persons, as he would be for the trespasses of his cattle (Vin. Ab. Trespass Z; Replevin, A; 2 Bl. Com. 193; 3 *Id.* 7; 4 *Id.* 234, 325; Mitten vs. Faudrye, Pop. 161; S. C. nom. Millen vs. Fawen, Bendl. 171; Mason vs. Keeling 1 Ld. Raym. 608; S. C. 12 Mod. 336; Read vs. Edwards, 17 C. B. (N. S.) 245; Regina vs. Robinson, 8 Cox Crim. Cas. 115.

"And dogs have always been held by the American courts to be entitled to less legal regard and protection than more harmless and useful animals. Putnam vs. Payne, 13 Johns, 312; Brown vs. Carpenter, 26 Verm. 638; Woolf vs. Chalker, 31 Conn. 121."

The decision then reviews the Massachusetts legislation upon the subject, and decrees that a statute of that State, which authorizes every police officer and constable to kill or cause to be killed all dogs not licensed and collared according to its provisions, whenever and wherever found, was a valid constitutional exercise of the police power.

"The regulations imposed by the statute upon the ownership and keeping of dogs are reasonable, and easy to be complied with. If any dog is an object of value or of affection to its owner he has only to procure and record a license and put on a collar, in order to bring it under the protection of the law."

In *Ex parte Cooper*, 3 Tex. Court of Appeals, 489 (30 Amer. Rep. 152), there is a discussion of the general principle, and a law of Texas which required every owner or harborer of a dog to pay $1 for each dog, into the treasury of the county, with other provisions of the same kind, under penalty of $5 and costs for every dog kept in contravention of the ordinance, was maintained as being within the police power of the government.

In Jenkins vs. Ballantyne, 8 Utah, 245 (15 L. R. A., p. 689), an ordinance was maintained which made a dog liable to be killed by any person unless registered and collared as provided therein—the ordinance being held to be a proper exercise of the police power.

From the body of the decision we take this: "The police power of the State has been used to regulate and control property in dogs to a greater extent than property in any other class of domestic animals. It is a peculiar kind of property. Such animals increase rapidly; they are usually of little expense to their owners when allowed to run at large, and in a domestic state they retain to a considerable degree their wild, mischievous, ferocious nature; their trespasses and invasions of rights not belonging to their masters are often such as are impossible to prevent, and when the mischief is done sometimes it is impossible to identify the

dog or his owner, and when found the latter is sometimes as irresponsible as the former; in fact, judicial process and inquiry is altogether inadequate to redress such wrongs. Hence such laws and ordinances as those in question are adopted, requiring the owners of dogs to register and collar them. By such means the owner is ascertained and made responsible, and all dogs not deemed worth the trouble and expense of registration are outlawed when at large and liable to be killed."

"It is competent for the Legislature to authorize the killing of all dogs found without a collar."

Morey vs. Brown, 42 N. H. 573.
Town vs. Town, 18 Pickering, 262.
Norwood vs. Wakefield, 133 Mass. 240.
State vs. Duffie, 34 N. H. 523.

The weight of authority is against the dictum of the case of Mayor, etc., vs. Meigs, 1 McArthur, 53 (29 Am. Rep. 578); in any event that case is authority only to the point that the *charter of Washington City did not authorize the arrest and imprisonment* of a person because he failed to pay his dog tax. Besides the ordinance, in that case, went to the extent of making it a *criminal offence* to keep a dog in one's own premises without first paying the tax. There is a vast difference between that ordinance and the law here under consideration.

It is an exercise of the police power and not of the taxing power of the State to regulate and license the keeping of dogs.

Tenney vs. Lenz, 16 Wis. 589.
Cole vs. Hall, 103 Ill. 30.
State vs. Topeka, 36 Kas. 76 (59 Am. R. 529).
See further: State vs. Cassidy, 2 Minn. 312 (21 Am. R. 765).
Van Horn vs. People, 46 Mich. 183.
Mitchell vs. Williams, 27 Ind. 62.

The constant discussion before this bar on the extent of and restraints on the police power leaves it unnecessary to do more than to cite the cases which in our view maintain this statute.

McMillan vs. Anderson, 95 U. S. 37.
Barbier vs. Connolly, 113 U. S. 27.
Giozza vs. Tiernan, 148 U. S. 657.
Fong Yue Ting vs. U. S., 149 U. S. 698.
Lawton vs. Steele, 152 U. S. 133.
Jones vs. Brimm, No. 621, decided February 1, 1897.
Hooper vs. California, 155 U. S. 648.
Mo. Pac. R. vs. Humes, 115 U. S. 512.
See further Stone vs. Mississippi, 101 U. S. 814.
Beer Co. vs. Mass., 97 U. S. 25.
Fertilizing Co. vs. Hyde Park, 97 U. S. 659.
U. S. vs. De Witt, 76 U. S. 41.
Slaughterhouse cases, 111 U. S. 746.
Also Gas Co. vs. Hart, 40 La. An. 477.
Villavaso vs. Barthet, 39 An. 247.
As to the policy of such laws—
Cooley Con. Lim., 5 Ed. 740–1.
License Tax Cases, 5 Wal. (72 U. S.) 462.
As an illustration we cite also
Walker vs. Whitehead, 43 Ga. 538.
Anding vs. Levy, 57 Miss. 51.
Pollard vs. Ins. Co., 63 Miss. 244, (56 Am. Reps. 805).

Where laws were upheld requiring parties doing business to take out a license, or pay a certain tax, as a condition precedent to an appeal to the courts, for the collection of debts incurred in such dealings.

And Czarnowski vs. Zeyer, 35 An. 796, maintaining a law which required certain physicians to make affidavit before a justice of the peace of their qualifications, and to obtain a certificate from him to that effect, and prohibiting recovery of their fees before the Courts in event of non-compliance.

The statute now under discussion enjoins a certain duty upon owners of dogs, and imposes a certain penalty upon

them if they fail to comply with the requirements of the law. There is "due process of law" in every word of the statute, and if a citizen loses his rights because he refuses to comply with the requirements of the law, then it his fault and not the fault of the law. It is not an unreasonable burden or hardship imposed on the owners of valuable dogs to require them to have these objects of value or endearment placed upon the assessment rolls.

According to precedent and by right reason, the power exercised in this instance by the State of Louisiana is strictly within its province.

Before closing I wish to acknowledge the valuable assistance I have received from my predecessor, who argued the case below, Mr. John M. Bonner, of New Orleans.

Respectfully submitted.

HENRY P. DART,

Attorney for Defendant in Error.

New Orleans, March 18, 1897.

166-698

No. 15,805.

Supreme Court of the United States.

GEO. W. SENTELL, PLAINTIFF IN ERROR,

versus

NEW ORLEANS AND CARROLLTON RAILROAD CO., DEFENDANT IN ERROR.

PETITION AND BRIEF FOR REHEARING.

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NEW ORLEANS AND CARROLLTON RAILROAD CO., DEFENDANT IN ERROR.

PETITION AND BRIEF FOR REHEARING.

The petition of George W. Sentell, plaintiff in error in the above entitled cause, respectfully represents:

That your petitioner prays for a rehearing in said cause, and for grounds of said rehearing assigns the following, to-wit:

1.

That this Honorable Court erred in its conclusion that, in Louisiana, dogs are not considered upon the same plane as horses, cattle and sheep and other domesticated animals. Louisiana is governed by the Civil Law which recognizes dogs, monkeys, cats, singing birds and the like as property. And in Louisiana, dogs are protected by Criminal Statutes.

2.

Even at Common Law, while dogs were at one time without the protection of the criminal laws, they were recognized as property and a civil suit could be maintained for the loss of them.

3.

The Legislature has the right to regulate the right to keep any property, but has no authority to declare that the right to own or keep depends upon payment of taxes.

ARGUMENT.

I.

We respectfully submit that, while in some of the States, it has been decided that dogs are not property and are not entitled to the protection of law, in others they are recognized as domestic animals, the friends of man, and entitled to the same protection as other domestic or domesticated animals. In Louisiana, governed as she is by the Civil law, dogs and even cats, monkeys, parrots and singing birds are property, and entitled to the same protection as horses, cattle, sheep and other property.

Our law is copied from the French who copied theirs from the Romans. Going as far back as Pothier, the Blackstone of the Civil law, under the title "Of Property" vol. 8, p. 123, we find:

"Among animals, those that are called dom-
"estic, such as horses, asses, sheep, goats, oxen,
"DOGS, chickens, geese, etc., are comprised in the
"partition of property which was made among
"men, and are things which individuals have the
"right to own as property, as well as any other
"kind of property; right which they preserve,
"even though they may have lost actual posses-
"sion.

"As to wild animals, *feræ naturæ*, they have
"remained in the old state of negative community.

"All those things, which have remained in
"the ancient state of negative community, are
"called *res communes*, because any one has the
"right to take them. They are also called *res*
"*nullius*, because no one has a right of property
"in them, so long as they remain in that state, and
"can acquire that right only by taking possession
"of them."

Therefore, according to Pothier, under the Civil law, dogs are domestic animals and classed with horses, cattle and sheep. And animals *feræ naturæ* are not property so long as they remain wild or *res communes*, but become property as soon as they are caught, although they still may be *feræ naturæ*. It is not because they are *feræ naturæ* that they are *res communes* or *res nullius*, but because they are in possession of no owner. As soon as one of those animals is caught, he becomes the thing or property of his captor, however wild or ferocious he may be.

Trebatius, Gaïus, Puffendorf, Barbeyrac and all the old as well as the modern writers on Civil law, recognize the right of property in animals *feræ naturæ* as soon as they are in possession of their captors.

Duranton, a modern civilian of high reputation, says, vol. 4, section 270 :

" But as to things which as yet have belonged " to nobody, such as wild animals, shells found on " the sea shore, ... they belong, under our law " as under the Roman law, to the one who finds " them or takes possession of them ; and this man- " ner of acquiring is that known in law under the " name of occupation."

Merlin, Vo. Animaux, No. 1, says that when we are in possession of these aninals (*feræ naturæ*) they belong to us as movable effects and come as such, in the quality of legal community.

In France, the Court of Cassation has decided : " Domestic animals comprise all those who familiarise themselves with man, live around him in his habitation, such as dogs, cats, pigeons, poultry and tamed animals."

Desquez, 30 Nov. 1813 ; Brosse c. Noezet, 17 Août 1822 ; Chauveau & Helie, t. 8, p. 170.

And M. Ortolan, in his historical explanation of the Institutes of Justinian, says at page 42 : " Therefore, the word thing (*res*) designates all " that is susceptible of forming the object of legal " rights. And in this condition is included all that " man, universal dominator, can have looked upon

" as submitted, or at least destined to his wants or " his pleasures; for in fine, the satisfaction of the " wants and reasonable pleasures of man, is the " final object of legal rights."

The Code Pénal of France, like the Revised Statutes of Louisiana, imposes a penalty upon whomsoever shall kill a domestic animal.

All the Civil law writers, without exception, recognize the right of ownership in and to any and all kinds of wild animals. Thus, if a man captures an elephant, a lion, a fox, a parrot or a monkey, such animal, from that moment, belongs to him, is his property, and no one has the right to take it away from him. The legislature, in the exercise of its police powers, has the right to regulate the manner in which he shall keep his property, but no legislature has the right to abridge his right of ownership. Such an abridgement is in conflict with the Constitution of the United States.

The Supreme Court of Louisiana, in Montgomery vs. Koester, 35 A. 1091, and in McGuire vs. Ringrose, 41 A. 1029, has recognized the absolute right of individuals to keep dogs for the protection of their homes, subject to their liability for damages done by such dogs.

No matter what other States governed by the Common law may have held, this case must be decided according to the laws of Louisiana, and, if under the laws of Louisiana, a dog is property, the legislature has no power to pass a law which would deny to the owner of a dog, rights which

they could not deny to the owner of a pig or a goat.

The Civil Code of Louisiana contains the following provisions :

Art. 448. "The word *estate* in general is "applicable to anything of which riches or fortune "may consist. This word is likewise relative to "the word *things*, which is the second object of "jurisprudence, the rules of which are applicable "to persons, things and actions."

Art. 449. "Things are either common or "public. Things susceptible of ownership belong "to corporations, or they are the property of in-"dividuals."

Art. 473. "Things movable by their nature "are such as may be carried from one place to "another, whether they move by themselves, as "cattle, or can not be removed without an extra-"neous power, as inanimate things."

Art. 475. "All things corporeal or incor-"poreal, which have not the character of immov-"ables by their nature or by the disposition of "law, according to the rules laid down in this "title, are considered as movables."

Art. 478. "The expressions *movable goods*, "*movables* or *movable effects*, employed as above "stated, comprehend generally all that is declared "to be movable, according to the rules laid down "in this chapter."

Art. 483. "Things susceptible of ownership, "are all those which are held by individuals, and

" which may be alienated by sale, exchange, do-
" nation, prescription or otherwise."

Art. 484. " Individuals have the free disposal
" of the property which belongs to them, under
" the restriction established by law."

Art. 488. " Ownership is the right by which
" a thing belongs to some one in particular, to the
" exclusion of all other persons."

Art. 489. " The ownership of a thing is
" vested in him who has the immediate dominion
" over it, and not in him who has a mere benefi-
" ciary right in it."

Art. 497. " No one can be deprived of his
" property unless for some purpose of public util-
" ity, and on consideration of an equitable and
" previous indemnity and in a manner previously
" prescribed by law."

Art. 3426. " Possession is the detention or
" enjoyment of a thing, which we hold or exercise
" by ourselves, or by another who keeps or exer-
" cises it in our name."

The Revised Statutes of Louisiana, under the head of " Crimes and Offenses ", Section 815, which is Act 120 of the Legislature of 1855, says :

Sec. 815. " Whoever shall wantonly kill any
" horse, mule or jackass, or any beast of the cow
" or hog kind, or A DOG, the property of another
" person, shall be fined in a sum not exceeding
" two hundred dollars or imprisoned not exceeding
" six months, and shall pay to the owner the value
" of the animal."

Therefore, Your Honors will see that, whatever may have been the Common law, or even the Civil law, by a Louisiana Statute which is still in force, dogs have the protection of our Criminal laws, and the owner has the protection of the Civil law.

Sec. 816. "Whoever shall wantonly or maliciously cruelly beat, maim or disable any of the animals specified in the foregoing section, shall be fined in a sum not exceeding one hundred dollars or imprisoned not exceeding one month, and shall pay to the owner any damage he may sustain in consequence thereof."

Under the above sections, which are in full force as part of the Criminal law of the State of Louisiana, dogs are considered sufficient property to justify criminal prosecution against whosoever shall kill, beat or maim them, and still, the legislature says that they shall not be property unless they are listed for taxation!

Sec. 1201 (being Act 148 of 1858). "From and after the passage of this act, all dogs owned by citizens of this State shall be, and are declared to be, the personal property of such citizens, and shall be placed on the same guarantees of law as all other effects and property now legally declared to be personal property."

And in 1882, the legislature enacts Act 107 which says:

Sec. 1. "From and after the passage of this act, dogs owned by citizens of this State, are

" hereby declared to be personal property of such " citizens and shall be placed on the same guaran- " tees of law as other personal property ; *provided* " such dogs are given in by the owner thereof to " the assessor."

Here is a law which declares that dogs are property, and still, the same law, in violation of the Constitution of the United States, makes the ownership of such dogs depend upon the fact of taxes being paid thereon.

The Constitution of 1879 of the State of Louisiana says :

Art. 203. " Taxation shall be equal and uni- " form throughout the territorial limits of the " authority levying the tax, and all property shall " be taxed in proportion to its value...."

Art. 204. " The taxing power shall be exer- " cised only to carry on and maintain the Govern- " ment...."

Art. 210. " There shall be no forfeiture of " property for non-payment of taxes.... but, at " the expiration of the year in which they are due, " the collector shall, without suit, and after giving " notice to the delinquent in the manner provided " by law.... advertise for sale the property on " which the taxes are due.... and on the day of " sale he shall sell such portion of the property, " etc."

The assessors, therefore, have the right to assess a man's dogs, and if the taxes are not paid, to sell such dogs. In as much as property owners

are not required to have their other property listed and it is made the duty of the assessors to list them, why should dog owners have to make a return of their dogs and in default thereof, that their property should be declared no property ?

Mr. Saunders, in his work on the Law of Taxation in Louisiana, p. 64, says :

" All movable property shall be assessed in " the parish where it is located, except as herein- " after provided. The term *movable property* is " defined at the end of the act thus :

" The phrase *personal property* or *movable* " *property* shall be held to mean and include all " things other than real estate, which have any " pecuniary value. . . ."

And, in less than two years after the enactment of Act 107 of 1892, its constitutionality was raised in the Courts of Louisiana, and Judge McVea, as the organ of the Circuit Court of Appeals, declared the act unconstitutional in the following able and well reasoned opinion :

" This is an action for the value of a certain " dog, the property of plaintiff, which was killed " by the son of defendant, and also for damages — " the killing having been, as alleged, done mali- " ciously and vindictively.

" The defendant filed an exception which the " lower Court sustained, that the petition disclosed " no cause of action. Defendant relied, in order " to sustain this exception, upon Act 107 of 1882, " which re-enacted and amended Section 1201 of

" the Revised Statutes. This latter act declared " such animals personal property, provided they " were given in by the owner to the assessor and " declared that they were not entitled to the pro- " tection of the law, unless the same shall have " been placed upon the assessment rolls.

" The constitutionality of this act is called in " question by plaintiff, and he urges a number of " reasons why it should be considered unconstitu- " tional. A review of the legislation upon this " subject of dogs will show that in 1858 it was " thought necessary to pass an act declaring dogs " property. Why it should be necessary to single " out this particular animal and have a legislative " enactment to declare it personal property does not " clearly appear unless we find it in the fact that, " under the Criminal laws of England, from which " we obtained our system and from which we " obtained our definitions of crimes that were not " especially set forth in our own Statutes, a dog " was considered in the nature of *feræ naturæ* and " did not come under the head of personal goods " of another. The carrying away of which was " denominated larceny. (See Bouvier).

" Be that as it may, we can see no reason why " a dog should not, if he has any value, be con- " sidered property like other animals that have " been domesticated and made useful and valuable " to the owner or possessor of such animal.

" It did not take any legislative act or recog- " nition to make all other animals of like nature

" property, and as such entitled to all the protec-
" tion conceded to other property.

" This right of property is above and inde-
" pendent of all legislative acts or constitutions
" and so declared by Cooley.

" It does not owe its origin to constitutions.
" They are held sacred and inviolable against even
" the plenitude of legislative power. These rights
" are protected under the principle of prevalent
" and universal authority. (Cooley, pp. 47, 212,
" 439.)

" Perhaps under the definition of larceny
" made at the time these animals were looked
" upon as a species of *feræ naturæ* a criminal
" action would not lie under the charge or theft or
" larceny. But that does not militate against the
" right of anyone to be compensated for damages
" due to his property or person.

" In our opinion no legislature by an act such
" as Act 107 of 1882 can divest or abridge that
" right without due process of law. If the legis-
" lature has such a right, it can equally declare
" that any other species of property shall no
" longer be considered property, or annex some
" onerous provision in order that same shall retain
" such status. This is beyond the power and
" directly in conflict with the Constitution which
" provides that the citizen's right shall not be
" abridged.

" A dog can no longer be considered a wild
" animal. They are in many instances of great

" value to the owner, and he can only be pro-
" tected in his ownership by allowing him all the
" protection the law accords to all other property,
" and this right cannot be restricted by the pas-
" sage of an act, declaring them to be property
" only when placed upon the assessment roll. It
" would hardly be contended that the legislature
" could enact a law declaring a horse no longer
" property, unless he was properly assessed, and
" yet this is in effect what Act 107 does in regard
" to dogs. The title of the act is, *an act with ref-*
" *erence to property* in dogs. The entire act, to
" our view is one of those sumptuary enactments
" resorted to by the legislature to collect a rev-
" enue by some imagined speedier process. We
" consider the act unconstitutional in this respect.
" Having a right of property in the dog, plaintiff
" had a right of action to sue for his value, and
" such damages as he may have suffered from the
" killing.

" In our opinion the District Judge erred in
" sustaining the exception. It is therefore ordered
" and decreed that the judgment sustaining the
" exception be reversed, and the case remanded
" to the lower Court to be proceeded with according
" to law."

And since 1884 that the above decision was rendered, every one in Louisiana had the right to look upon said act as unconstitutional.

We beg to call the attention of the Court to the fact that, in New Orleans, as in every city

" property, and as such entitled to all the protec-
" tion conceded to other property.

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" to law."

And since 1884 that the above decision was rendered, every one in Louisiana had the right to look upon said act as unconstitutional.

We beg to call the attention of the Court to the fact that, in New Orleans, as in every city

of this great Union, there are one or more stores in which singing birds, monkeys, parrots, little alligators, fighting cocks and toy dogs are sold. These parties pay a license to the city and State to carry on their trade. They have a capital of hundreds, some of thousands of dollars invested in their business. They make thereby a living for themselves and family. Still, under the decision just rendered by Your Honors, these parties would have no recourse against thieves or malefactors who could, without risk, enter their stores by night or day and steal or turn loose all their birds, monkeys and other animals which, while kept by the purchasers only for pleasure, still return to the dealer a living and sometimes a fortune.

The writer remembers to have known in New Orleans, three men who earned their living in the following manner: One exhibited a lot of trained fleas; another exhibited a lot of trained white mice; the third exhibited a lot of trained parrots. Those fleas, mice and parrots were wonderfully trained, and certainly of value to the owners. Could it be said that the latter had no right of property in them?

II.

Under the Common law of England, at the time when dogs were looked upon as animals, *feræ naturæ*, that his devotion and services to man had not been generally recognized, the stealing of a dog was not considered larceny, because dogs

were reputed to be of no value whatever and a thing of no value could not be the subject of larceny.

There are however evolutions in property as in everything else, and in England from whence the Common law is derived, the right of man to own and keep dogs was early recognized.

Sir William Blackstone in the fourth book of his commentaries at page 236, says :

" As to those animals which do not serve for " food, and which therefore the law holds to have " no intrinsic value, as dogs of all sorts, and other " creatures kept for whim or pleasure, though a " man *may have a base property therein and main-* " *tain a civil action for the loss of them*, yet they " are not of such estimation, as the crime of steal- " ing them amounts to larceny. But, by statute " 10 Geo. III C. 18, very high pecuniary penal- " ties, or a long imprisonment, and whipping in " their stead, may be inflicted by two justices of " the peace (with a very extraordinary mode of " appeal to the quarter sessions), on such as steal, " or knowingly harbour a stolen *dog*, or have in " their custody the skin of a dog that has been " stolen."

Note (25). By Statute 7 and 8, Geo. IV. C. 29, § 31, stealing " any *dog*, beast or bird ordi- " narily kept in a state of confinement, and not the " subject of larceny at Common law, is punishable " by fine not exceeding 20 *l.*, together with the " value of the dog, etc., lost, for the first offense,

" and imprisonment not exceeding twelve months,
" and whipping for the second offense. And by the
" old game laws of England, the stealing of a dog
" was a capital offense."

And by Statute 8 and 9 Vict., dog stealing was declared a misdemeanor and punishable by fine and imprisonment.

A statutory law does not change, it is true, the principles of the Common law, but Blackstone said, as above, that under the principles of Common law a man *could maintain a civil action for the loss of them* (dogs).

Again, Sir William Blackstone, in volume two of his commentaries, treating of " THE RIGHTS OF THINGS, " page 393, says:

" In all these creatures, reclaimed from the
" wilderness of their nature, the property is not
" absolute, but defeasable: a property that may be
" destroyed if they resume their ancient wildness
" and are found at large. For if the pheasants
" escape from the mew, or the fishes from the
" trunk, and are seen wandering at large in their
" proper element, they become *feræ naturæ*
" again; and are free and open to the first occu-
" pant that hath ability to seize them. But while
" they thus continue my qualified or defeasable
" property, they are as much under the protection
" of law, as if they were absolutely and indefeas-
" ably mine; and an action will lie against any
" man that detains them from me or unlawfully
" destroys them."

In England, Trover lies for a parrot or monkey, because they are merchandise. 2 Blackstone, page 391, note 4.

And we find in the case of *in re* Dean, 41 Ch. D., a legacy of 750 *l.* a year to be devoted to the maintainance of the testator's horses and kennel of dogs, was maintained.

We therefore submit that, under the above principles of the Common law as laid down by Blackstone, and from his commentaries have we derived all the principles of the Common law, the few Judges in the United States who have decided that a civil action could not be maintained for the loss of a dog, because dogs were not or are not the subjects of larceny at Common law, have made a false application of the doctrine and distinctions so well explained by Blackstone.

We say the *few Judges*, because we find that, in the majority of the States it has been decided that dogs are property, and as such, entitled to all the protection of law that other animals are entitled to.

We find that dogs have been held to be property and actions for injury maintained by their owners, in the following cases, some of which are most interesting and instructive, to-wit:

Wolf vs. Chalker, 31 Conn. 121; State vs. McDuffie, 34 N. H. 523; Parker vs. Mise, 27 Ala. 480; Dunlap vs. Snyder, 17 Barb. (N. Y.) 561; Harrington vs. Miles, 11 Kans. 480; S. C., 15 Am. Rep. 355; Wheatley vs. Harris, 4 Sneed

(Tenn.), 468; Findley vs. Bear, 8 S. & R. (Pa.), 571 ; Putnam vs. Payne, 13 Johns. (N. Y.), 312 ; Brown vs. Carpenter, 26 Vt. 638 ; Blair vs. Forehand, 100 Mass. 136 ; S. C. 1 Am. Rep. 94 ; Perry vs. Phipps, 10 Ired. (N. Car.), 259 ; S. C. 51 Am. Dec. 387 ; State vs. Latham, 13 Ired. (N. Car.), 33.

And Dodson vs. Mock, 4 Dev. & Bat. L. (N. C.), 146 ; S. C. 32 Am. Dec. 677, in which Gaston, J., said :

" Dogs belong to that class of domiciled " animals which the law recognizes as objects of " property, and whatever it recognizes as property " it will protect. "

And we find that in some States where, as in Louisiana, statutes provide that "*all personal property*" is subject to larceny, and where personal property has been defined as "*goods and chattels*," the following decisions have included the dog as personal property, subject to larceny :

People vs. Campbell, 4 Park. Cr. C. (N. Y.), 386 ; People vs. Maloney, 1 Park. Cr. C. (N. Y.), 598 ; State vs. Brown, 9 Baxt. (Tenn.), 53 ; S. C. 40 Am. Rep. 81 ; Harrington vs. Miles, 11 Kans. 480 ; S. C. 15 Am. Rep. 355 ; Mayor vs. Meigs, 1 McArthur (D. C.), 53 ; Heirodt vs. Hackett, 34 Mich. 283 ; S. C. 22 Am. Rep. 529 ; Mullay vs. People, 86 N. Y. 365 ; Longwell vs. McMaster, 10 Abb. (U. S.), 132.

And dogs were recognized as domestic animals in the following cases :

Hurley vs. State, 30 Tex. App. 333; Shaw vs. Craft, 37 Fed. Rep. 317; State vs. Giles, 125 Ind. 125; Dodson vs. Mock (N. C.), 32 Am. Dec. 677; State vs. McDuffie, 34 N. H. 526; 69 Am. Dec. 516.

And, in State vs. Yates, 10 Crim. Law Mag. 439, it is held that a dog is a "thing of value," and burglary may be committed by breaking and entering with intent to steal a dog.

Note that in Louisiana our Revised Statutes, under the general title of "Crimes and Offenses," and under the subdivision "Offenses Against Property," Sections 815 and 816, enacted in 1855, killing, beating or maiming dogs is made a crime and punishable by fine and imprisonment.

If Act 107 of 1882 is upheld, we will have on our statute books a Criminal law protecting dogs, and another law declaring that they are not to be protected in civil actions! Just the reverse of the old Common law.

The two statutes, while inconsistent, would not be in conflict. And our Courts would have to decide that a fine and imprisonment for killing, beating or maiming a dog is legal, because dogs are sufficiently considered to be protected by the Criminal law; but that a judgment in favor of the owner for the value of his dog is illegal, because dogs are not sufficiently considered to be protected by the Civil law.

We have statutes for the protection of game, and still Act 107 refuses to dogs, without which

game cannot be secured, the protection which is accorded to chickens, goats, monkeys and parrots.

The following cases have decided that :

" To justify a man in killing the dog of an-
" other, he must show that the animal was in the
" act of destroying his property, and that the kill-
" ing was absolutely necessary to preserve his
" property or person."

Brown vs. Hoburger, 52 Barb. (N. Y.), 15 ; Perry vs. Phipps, 10 Ired. L. (N. Car), 259 ; S. C. 51 Am. Dec., 387 ; Henckly vs. Emerson, 4 Cow. (N. Y.) 351 ; S. C. 15 Am. Dec. 383; King vs. Kline, 6 Pa. St., 318 ; Canefox vs. Creushaw, 24 Mo. 199 ; Brent vs. Kimball, 60 Ill. 211 ; S. C. 14 Am. Rep., 35 ; Leonard vs. Wilkins, 9 Johns. (N. Y.), 233 ; Bradford vs. McKibben, 4 Bush. (Ky.) 545.

In the case of Wright vs. Clark, 50 Vt. 130 ; S. C., 28 Am. Rep. 496, it was held that, when a dog followed by his master, was pursuing a fox and was accidentally shot by another party who claimed to have shot at the fox, but accidentally killed the dog, the owner was entitled to damages.

In Holland, Belgium, Austria, Switzerland and Germany, dogs are used as beasts of burden, more than any other animal ; they are harnessed to the milk and vegetable carts.

Those little carts are drawn by a dog on one side and a woman on the other ; when they arrive at the house of a customer, the woman goes in the

house to deliver her vegetables or milk and leaves her cart outside under the care of her faithful and intelligent dog.

In the mountains and other districts of Switzerland many women deal in the milk of the Alpine Goats. If they did not have a dog to keep these goats within prescribed districts they might as well give up the business.

During and after the snow storms to which the highland districts of Scotland are exposed, the dog is invaluable in saving his master's property from almost total destruction. Without it these highlands would be almost useless for sheep farming purposes. "It would require," says Ettrick Shepherd, "more hands to manage a stock of "sheep, gather them from the hills, force them "into houses and fords, and drive them to markets, "than the profits of the whole stock would be "capable of maintaining."

Even in the State of New York their usefulness has been put to profit in running treadmills. We find in the case of People vs. Special Sessions, 4 Hun. (N. Y.) 441, the Court decided that using a dog in a treadmill is not cruelty to animals.

Kane, Dr. Nansen and Greeley, the arctic explorers, mention his usefulness among the Esquimaux. Those explorers would never have reached the points they explored, without the aid of dogs. Kane tells how half a dozen of those dogs, well worn by previous travel, carried him with a fully burdened sledge, between 700 and 800 miles

during the first fortnight after leaving his ship—a mean rate of 57 miles a day. He says that these dogs have borne a prominent part in arctic exploration, and without them much of the difficult work done in this field would have been well-nigh impossible.

Besides being used as beasts of burden, they are being actually and successfully used in the French and German armies. The Greeks employed them in chase and war; for the latter purpose they were armed with spiked collars and coats of mail. The City of Corinth was saved by fifty war dogs which attacked the enemy that had landed while the garrison slept, and which fought till all were killed, except one which succeeded in rousing the garrison.

The Romans, also, employed them in war. Antony shouted:

"Cry havoc, and let slip the dogs of war."

Besides being used in war, they are sometimes invaluable in saving human life. The Newfoundland and St. Bernard dogs especially. The monks of Mount St. Bernard had a valiant and courageous animal who had twenty-three medals hanging to his collar, each one evidencing a human life saved.

In the United States, many a criminal has been captured with the aid of bloodhounds.

They are useful in the country to run deer, foxes and rabbits, to point partridges, grouse and other birds; they procure great amusement to

sportsmen and help the professional hunter to make a living.

In the cities they are the faithful guardians of many houses when the inmates are away during the day, or sleeping during the night.

Few families are without a dog and he is the faithful companion of the master; the friend and protector of the children. He is loved by all, he adores every member of the household. Many poems have been written about him ; great painters have reproduced him on canvass ; many tears have been shed over his grave in the back yard !

A noted author whose name I do not recall, has said that, without the horse, the ox and the dog, man would never have attained such a high degree of civilization.

Baron Cuvier says, that the domestication of dogs " is the completest, the most singular and the most useful conquest ever made by man."

Darwin and many others speak of the dog as a domestic animal, as the most intelligent, the most faithful, the most grateful of all.

Toussenel said : " The dog is the heroic defender, the vigilant guardian of his master's property."

Voltaire said : " It seems that nature has given the dog to man for his protection and for his pleasure."

Buffon, the great naturalist, makes a distinction between the wild dog and the domestic dog. He says that the domestic dog is the best friend of

man, the best protector of his home and the most intelligent of all the animals. That the dog is invaluable to man as a companion, as a guardian of his home and as a beast of burden.

What would the blind man do without his faithful dog? Has any one the right to kick or kill him?

In the United States there are many thousands of dogs whose intrinsic, marketable value range from ten dollars to one, two, three and even five thousand dollars. As in England, there is published in the United States a kennel book in which from three to five thousand dogs are registered every year. The American Kennel Club began registering the first dog in the year 1878 as No. 1, and a dog registered to-day would get a number in the forty-five thousand, and I dare say that not one-fourth of the valuable dogs are registered.

Several dog papers are published in the United States. Among others, the American Field, a thirty-two sheet, weekly paper, published in Chicago, and having a wide circulation from Maine to California. The American Field sends a representative to attend and report all bench shows and field trials.

There are several men in each State who earn their living training dogs at prices ranging from fifty to one hundred and fifty dollars.

At the field trials and at bench shows thousands of dollars are distributed every year in prizes. At the bench shows of New York and Boston

there are every year hundreds of thousands of dollars worth of dogs.

The Court say that dogs are in the same category as cats, monkeys, parrots and singing birds. I submit that while the latter are of less value than dogs, they are as much property. In every city in the world, they are articles of commerce. If a man wants any of these animals, he has to go to a bird store and buy one, at prices ranging from five to one hundred dollars. After he has made his purchase, the animal belongs to him, and no legislature should be permitted to deprive him of his property without due process of law.

The business of raising and selling dogs is as legitimate as that of breeding race horses, and quite as useful to society, and it is engaged in by men of equal brains, culture and capital. Shall these men be denied the protection which the law extends to all other property owners because they have invested their money in fine dogs instead of in game cocks or fast running horses ?

A race horse is kept only for pleasure ; a fighting cock is raised and kept only for a cruel sport ; and still they are property. Diamonds, rubies, pearls, lace, etc., are not fit for food ; they are ornaments only, and still are property ; so are Brazilian bugs.

The student of history remembers, with affection, the noble act of fidelity of the little " cur " who always spent the night on the bed of William,

of Orange, the champion of the cause of freedom of opinion. On the night of the twelfth of September, 1572, a band of assassins penetrated the camp of the patriots, and the boldest, led by Julien Romero, made at once for the prince's tent. His guards and himself were sleeping, but the little "cur" was a loving and watchful sentinel. He barked furiously and scratched his master's face with his paws. William barely had time to mount his horse and escape. His guards were killed, and but for the watchfulness of that little "cur" he himself would have been murdered.

If this were simply a dog case in which the plaintiff in error had only one object in view: to recover the value of his dog or to be avenged for its wanton killing, we would feel compelled to apologize for asking this Court to give further consideration to this case. But, in our opinion, the Legislature of Louisiana has violated the Constitution of the United States, and in such cases, the right of appeal is given to this exalted Court, regardless of the object or amount in dispute. And Your Honors, looking only at the principles presented for your determination, have, in the year 1894, passed upon the case of *Lawton vs. Steele*, *152 U. S. 133*, in which the object of the suit was a fishing net worth about six dollars. In that case Your Honors decided that if nets are being used in fishing in a manner detrimental to the interests of the public, it is within the power of the Legislature to declare

them to be nuisances, and to authorize the officers of the State to abate them. But in that case Your Honors said: "In *Rockwell vs. Nearing*, *35 N. Y.*, *302*, an act of the legislature of New York, "which authorized the seizure and sale without "judicial process of all animals found trespassing "within private inclosures was held to be obnox- "ious to the constitutional provision that no per- "son should be deprived of his property without "due process of law. See also Austin vs. Mur- "ray, 16 Pick. 121; Watertown vs. Mayo, 109 "Mass. 315; 12 Am. Rep. 694; Butcher's Benev. "Assn. vs. Crescent City L. S. and S. H. Co. "(Slaughter House Cases), 83 N. S., 16 Wall. "36; Re Cheesebrough, 78 N. Y., 232; Brown "Perkins, 2 Gray, 89. In all these cases the acts "were held to be invalid as involving an unneces- "sary invasion of the rights of property, and a "practical inhibition of certain occupations harm- "less in themselves, and which might be carried "on without detriment to the public interests."

We admit the right of a State, or even of a municipal authority to tax dogs, to require that no unlicensed dog shall be permitted to roam at large; we admit the right of the public authorities to kill a mad dog, licensed or not, listed for taxation or not; to blow up or pull down a house to avert or stay a general conflagration. We admit that right even in individuals. The protection of the community is all important. But we deny the right to the legislature to say, that prop-

erty which has been recognized for years as property, shall, in the future, not be property unless listed for taxation.

We admit that the legislature could regulate, or even prohibit, the keeping of dogs within the State, but we deny that the legislature has the right to declare them as property, subject to protection of law, only if they are listed.

We need not dispute the correctness of any of the decisions quoted in the Court's opinion. We admit that in the exercise of police power, a State or city can prohibit or regulate the keeping of any property, but we submit that a State has no right to make the right of property depend upon the listing thereof.

The City of New Orleans has adopted ordinances prohibiting the running at large of cows and goats within the city limits; prohibiting the keeping of hogs within certain districts, and is contemplating prohibiting dairies to be kept in the city. All these are legal police regulations. But the city, or even the State, would have no right to declare that only such of those animals as are listed for taxation are entitled to the protection of law or to the status of property.

Act 107 of 1882 is not a police regulation, for it does not prohibit or regulate the keeping of dogs. There is no penalty against the keeping of worthless dogs. It refuses protection of law to a certain class of property unless listed, but authorizes no one to kill, beat or maim them, for the Statute

of 1855, which is still in force, makes it a crime to kill, beat or maim them. The only effect of the statute is to protect dog thieves.

The point upon which Your Honors have decided this case, *i. e.*, that dogs are not property, had been made in the lower Court before the jury. After argument, counsel for the railroad being convinced that, in Louisiana such a point could not hold, did not press it, and abandoned it in the Court of Appeals and in this Court. And we therefore, did not present that question in our original brief.

We earnestly and confidently ask Your Honors to grant a rehearing.

Respectfully submitted,

GEORGE DENÈGRE,
OMER VILLERÉ,
Of Counsel.

We certify that the points presented in the above application for a rehearing are, in our opinion, well founded in law.

GEORGE DENÈGRE,
OMER VILLERÉ,
Of Counsel.

New Orleans, May 10th, 1897.